IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

ALL RAJ. SERVICE DOCTORS ASSOCIATION
V/S
STATE OF RAJASTHAN

S.B.CIVIL WRIT No. 2949 of 1992
Under Article 226 of the Constitution of India.

Date of Order : 1st May, 2006

PRESENT
HON'BLE SHRI N P GUPTA,J.

Mr. M. MRIDUL with Mr. R.N. UPADHAYAY, for the petitioner

Mr. S.S. LADRECHA, A.G.A., for the respondent

BY THE COURT:

This petition has been filed by the petitioner-association, claiming a direction, that the entries in the Rajasthan Civil Services (Revised Pay Scale) Rules, 1989, being Senior Specialist (Selection Grade) Scale 4100-5300, Senior Specialist (Ordinary Scale) 3700-5000, and Junior Specialist 3000-4500, be declared illegal.

The other relief claimed is, that the respondents be directed to given the Specialists of the State of Rajasthan, parity in the matter of pay, with the Specialist of the Central Government, as shown in Column No.5, in the Chart annexed, and make their promotions 'time bound', as in the case of Central Government, from the date, this was done for Non-Postgraduate Medical Officers. The alternative prayer made is, for raising the pay scale of Junior Specialist to be 3700-5000, from their threshold, and revise the pay scale of the Senior Specialist, and make promotions 'time bound' from the date, the pay rules of 1989 came into force.

The case of the petitioner, as disclosed in the writ petition is, that the members of the petitioner-association are members of services, constituted by Rajasthan Medical and Health Service Rules, 1963, hereafter referred to as the Rules, and is in regard to those, who are Medical Officers, possessing Post Graduate Degree, Senior Medical Officers, Junior Specialists and Senior Specialists, in the Rajasthan Medical and Health

Services. The post and the method of recruitment thereto, has been provided in the Schedule appended to the Rules. It is alleged, that the channel, in respect of the Post Graduate members of the service, commencing from the post of Medical Officer onwards, is Medical Officer, then Senior Medical Officer, then Junior Specialist, then Senior Specialist, then Sr. Specialist (Selection Scale), then Additional Director, and then Director; while for Non-Post Graduate Medical Officers is, Dy. Director/ CMHO/ Addl. CHMO/ Dy. Controller of Hospitals, and the Joint Director, then Additional Director, and then Director. Thus, it is alleged, that both, Post Graduate and Non-Post Graduate, get appointment to the post of Medical Officer, as also, as Senior Medical officer, but for appointment to the post of Junior Specialists onwards, in the Post Graduates, one must be a Post Graduate, whereas this is not the requirement, in respect of the post in Non-Post Graduate. With this, the grievance of the petitioner raised is, that the Post Graduate members have been subjected to hostile

discrimination, as Medical Officers have been given the pay scale of Medical Officers of Central Government, while the Specialist of the State of Rajasthan have not been given pay scale of Specialist, at par with Specialists in the Central Government. The other grievance is, that whereas promotions of the Post Graduates, employed in Central Government as Specialist is 'time bound', which is not in Rajasthan. Then the next grievance is, that the Medical Officers have been given pay scale in the manner, that they come to get a higher pay than that of the Specialist, when it reaches a particular stage, and that the post of Specialist is third in the hierarchy, and nevertheless, if a person who becomes Senior Medical Officer (Selection Scale) gets scale of 3700-5000, whereas a Junior Specialist on being promoted from the post of Senior Medical Officer, gets the scale of 3000-4500, with one advance grade increment, which does not give him any advantage in addition, in the matter of seniority. Likewise, the scale of Senior Specialist and the Senior Medical Officer is the same, even though person going to the post of

Senior Specialist by promotion will require minimum 4 years experience, though in fact he seldom gets the promotion before 10 to 15 years, and the pay scale of Senior Specialist, despite being a post, 4th in the ladder, is put at par with the 3rd post in the ladder. Then it is alleged, that Senior Medical Officer (Selection Scale) comes to the post of Joint Director with the pay scale of 4100-5300, which is not so as Senior Specialist, even though, after reaching the post of Joint Director, a Non-Post Graduate Medical Officer can get the post of Additional Director on completion of 5 years of service, and the Senior Specialist also has to wait for 5 years, but he seldom get the post in 5 years, looking to number of Senior Specialists, and the number of posts of Joint Director. Then it is alleged, that after reaching the post of Senior Specialist, a Post Graduate Medical Officer has to wait for 10 years for getting the scale of 4100-5300, being that of Selection Scale Senior Specialist, while a Non-Post Graduate Medical Officer can reach the post of Joint Director in the scale of 4100-5300, after reaching the post of

Senior Medical Officer (Selection Scale), and is not required to put in any minimum period of service. Then comparative position of the posts in Central Government has been pleaded. Inter-alia with these averments, it is also contended, that if the situation continues for some time, persons may well feel advised not to do Post Graduation, and secure any specialization in any particular speciality. The public at large will suffer on that account, when specialization is going to the stage of super-specialization, create a situation which will no doubt pursue, not to acquire qualification, specialised in super-speciality, which will be totally against public policy, and will create inefficiency, and make the services bereft of any incentive. It is also contended, that it happens, more often then not, that a person lower in the hierarchy goes to the next higher post, purely on account of the fact, that in a given set of circumstances, higher posts in a particular speciality may be created, and it may not be created in other speciality, the creation of post being totally fortuitous circumstance, it may well

happen, that a person far junior in the cadre of Senior Medical Officer may be able to reach the post of Junior Specialist, merely on account of fact, that post may be created in one speciality, sometime depending on sweet will of person at the helm of affairs, and sometimes for bonafide reason, that one post may be required in one speciality, and may not be required in another speciality. Thus, when creation of post is speciality-wise, and promotions are not 'time bound', then a paradoxical situation always arise. With these allegations and contentions, the above reliefs have been claimed.

A reply to this writ petition has been filed by the respondents, inter-alia contending, that there are two channels of Doctors in the Medical Department, one being Clinical and other being Non-Clinical, both have different hierarchy, as shown in para-A/3 of the reply. According to which, a Post Graduate Doctor, who opts clinical side, after reaching the post of Senior Specialist becomes eligible for the post of Additional Director after four years service as Senior

Specialist, subject to suitability and availability of the post, and in case he does not get promotion to the post of Additional Director, then on completion of 10 years he is granted Selection Scale of Senior Specialist, subject to suitability and availability of the same, which is equivalent to the post of Joint Director, in non-clinical side. Thus, a Post Graduate Doctor has no edge over the Non-Post Graduate Doctor, as far as promotion is concerned. It is then pleaded, that both, Post Graduate and Non-Post Graduate, are appointed as Medical officers at the initial stage, and are promoted to the post of Senior Medical Officer, then Post Graduate Doctors can, either opt to become Senior Medical Officer, or to become Junior Specialists. It was pleaded, that the incumbents, serving with the government of Rajasthan, are governed by the state's Rules, and not the Rules of Central Government, and the scheme of promotion as provided by the Central Government, is not mandatory to be provided by the State. It was pleaded, that the Post Graduate Doctors, who enter into service at a later stage, are duly compensated

by being given four advance increments in the pay scale. Then the placement in the ladder on different posts, was also contested, and it was specifically pleaded, that ordinarily, a Medical Officer in non-clinical side becomes Director after service of 23 years, while Post Graduate Doctors in clinical side take only 21 years to become a Director, which shows an otherwise situation than the one pleaded by the petitioner. It was then pleaded, that P.G. Doctors have option to opt, either clinical side, or non-clinical side, whereas the Non-P.G. Doctors have only one option i.e. non-clinical side, and the channels of promotions are created by the Government, as per requirement of the service, and the non-clinical side has lesser posts, than the clinical side, and therefore, the persons, who are in non-clinical side get a little faster promotion, but then, the channels meet at one post, i.e. the post of Additional Director, on which, doctors of both sides, availing promotions as per rules, reach at that post, and therefore, the grievance is not maintainable. Various other pleadings were taken in the reply, which need not

detain me, in view of the fact, that it was submitted by learned counsel for the petitioner, that during pendency of the writ petition, pay scales of doctors have been brought at par with the pay scales of the doctors in the Central Government.

Arguing the writ petition the only grievance ventilated was, that the doctors in the State of Rajasthan should be provided 'time bound' promotion instead of the promotion, as provided in the rules, being subject to availability of the post, and suitability etc. Relying upon the judgment of Hon'ble the Supreme Court in Mohd. Usman & Ors. Vs. The State of Andhra Pradesh, reported in AIR 1971 SC 1801, it was contended, that since the chance of promotion of the petitioner depends on wholly fortuitous circumstance of existence or creation of vacancy of the promotional post, which, at times, may or may not be created, and thus, the petitioner's fundamental rights, under Art.14 and 16 are violated, and therefore, rules are required to be

amended, so as to provide, for making 'time bound' promotions, as in the case of Central Government, and from the date this was done for Non-Post Graduate Medical Officers. Nothing was submitted regarding other reliefs, and other contentions.

Learned counsel for the respondent, on the other hand submitted, that the cadre of Post Graduate Doctors, opting for clinical side, also have sufficient opportunities of promotions, virtually at par with those in the non-clinical side, of course, sometimes, the promotion may be little slow. However, it was denied, that creation of post is withheld for any extraneous consideration. It was also submitted, that the provision for promotion, and promotional avenues is very much clear in the rules, and therefore, it is the sweet will of the incumbent to opt for clinical, or non-clinical wing, and once having opted that, this type of grievance cannot be raised. The other submission made is, that the rules, as framed, are fully in accordance with the provisions of Article 14 and 16 of the Constitution

of India, and it is not open to this Court, under Article 226 jurisdiction, to direct the government, to frame particular policy, in the matter of promotion, whether by amending the Rules, as desired by the petitioner, or otherwise, and therefore, the petitioner is not entitled to any relief.

I have considered the submissions.

Admittedly, the grievance regarding pay scales, to be brought at par with those of the doctors of the Central Government no more survives, and the only question requiring to be gone into by me is, as to whether the petitioner is entitled to have a direction issued, directing the government to provide for 'time bound' promotions, in the case of Post Graduate doctors, in clinical side.

I may straightway deal with the judgment in Mohd. Usman's case, relied upon by the learned counsel for the petitioner. True it is, that the expression "fortuitous circumstance" has been taken

into consideration by the Hon'ble Supreme Court, but then, except that, this judgment has no bearing on the controversy involved in the present case. In that case, the vires of the provisions of Rule 5 of the Andhra Pradesh Registration Subordinate Service Special Rules was under consideration, which had been struck down by the High Court, on the ground of being violative of Article 14 of the Constitution, and consequently, had also quashed the recruitment of some of the respondents, made therein, for being posted as Sub-Registrars Gr.II. The facts were, that the concerned parties were serving as clerks, either in the upper division, or in the lower division, in the Registration and Stamps Department, including the office of the Registrar General of Births, Deaths and Marriages, and the Office of the Registrar of the Firms. Some of the respondents had been recruited by the Inspector General of Registration and Stamps, for being appointed as Sub-Registrars, and that recruitment was challenged, which writ was dismissed summarily by the Single Judge. However, the Division Bench accepted the contention of

validity of Rule 5, and struck down the impugned recruitments, and the only question for consideration before Hon'ble the Supreme Court was, as to whether Rule 5 is ultra-vires, and whether recruitments made, are not in accordance with the rules. Examining the merits, it was considered, that Rule 2 provides, that a post of Grade I Sub-Registrar should be filled up by promotion from Grade II Sub-Registrar, and Grade II Sub-Registrar are to be appointed, either by promotion from reserve Sub-Registrars, or by recruitment, by transfer, from the clerks, of the Registration and Stamps Department, including the office of the Registrar General of Births, Deaths and Marriages and the office of the Registrar of the Firms. The qualifications were also prescribed, and it was contemplated, that preference will be given to persons, who, in addition to the qualifications specified in items (i) to (iii), possess a Degree in Law of a University in the State, or any other equivalent qualification, or a Pleader ship Certificate in the First Grade, or who has put in five years service in the category of Upper

Division Clerks in the Registration Department. The challenge was on the ground, that among the clerks there are UDCs as well as LDCs, yet all of them have been put in one class, for the purpose of recruitment, while according to the Ministerial Service Rules, the UDC had to be selected from the LDCs, after the LDCs had put in certain number of years of service, and after they have passed the Accounts Test, as well as the Registration Test. Thus, the UDC holds superior post, his salary is higher, and his conditions of service are better. Thus, treating un-equals as equals, violates Article 14. On the other hand, it was submitted by the respondents, that before considering the vires, first of all, it should be found out, as to what is the reason behind the rule, and the reason advanced was, that Grade II Sub-Registrars, are in a State wise cadre, whereas the UDCs and LDCs belong to a district wise cadre, and the promotions from LDC to UDC are also made district wise with the result, that chances of promotion in one district materially differs from another district, it depends on number of posts available in particular

district, so much so, that in one district an LDC may get promotion on putting in 5 years service, whereas in other district LDC possessing same or better qualification and efficiency, may not be promoted for 15 years or more, that being so, while making recruitment to the State wise cadre, it was not possible for the State, to make distinction between LDC and UDC, and therefore, they were treated as one Class, and then preference was also provided for UDC, putting in 5 years service or more. On these facts, Hon'ble the Supreme Court found, the rule to be valid, rather found, that if the State had treated UDC as being superior to the LDC, for the purpose of recruitment, it would have resulted in the great deal of injustice to a large section of clerks. It was then observed, that the fortuitous circumstance of an officer in a particular district becoming UDC, would have given him an undue advantage, over his seniors, who might have been efficient, or more efficient than himself, merely because, they chanced to serve in some other district, and therefore, it was found, that the State cannot be said to have treated un-

equals as equals. In my view, the principles propounded in this judgment have no application to the present case.

That apart, even if it is considered that Hon'ble the Supreme Court had noticed the effect of fortitutous circumstance of the incumbent being appointed in a particular district as L.D.C., and on that count his chances of promotion to the post of L.D.C. being not equal to the persons being appointed as L.D.C. in other districts, even in that event, in my view, this was a circumstances taken into account by the concerned state, and provision was made in the rules to take care of the situation which provision was challenged, and the challenge was negatived, but then, on that count, it cannot be said that the petitioner is entitled to invoke 226 jurisdiction of this Court to direct the State Government to frame the Rules, so as to take care of so called fortitutous circumstances projected by the petitioner.

The petitioner has not been able to

successfully make out, that the provisions of the Rules, providing for promotion, treated the officers of any one wing discriminately. In my view, even if it were to be assumed, that out of the two wings, being clinical, and non-clinical, there is some difference in the speed of chances of promotion, on that ground, it cannot be directed, that the promotions should be made on 'time bound' basis. The two wings constitute independent classes, within themselves, and simply because, ultimately, the feeding channel of the post of Director, or Additional Director/Joint Director, is from both the wings, ipso facto, the incumbents in both the wings cannot claim parity, in the speed of promotion. Similarly, on that count, it cannot be said, that Article 14 and 16 are in any manner violated.

The other aspect of the matter is, that the question, as to whether the promotion should be provided on 'time bound' basis, or on the basis of availability of posts, by selection, on the prescribed criteria, is precisely, a 'policy

matter', resting within the realm of the employer's wisdom, and discretion. Since there is nothing to show, that such jurisdiction, or discretion, vesting in employer, either violates Article 14 and 16, or is not in accordance with the object sought to be achieved, or has no reasonable differentia, it is not open to this Court, under Article 226, to direct the State Government, to lay down a particular promotion policy, as suggested by the petitioner, or even, as may be felt by this Court, to be little better than the existing policy. It is not a case, where the incumbents have no avenues of promotion, or are in a blind channel.

In that view of the matter, I am not inclined to exercise my 226 jurisdiction, in favour of the petitioner, to direct the State Government, to provide for 'time bound' promotion, as desired by the petitioner.

Thus, the writ petition has no force, and is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA),J.